

UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

October 2, 2003

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:35 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Sheridan Downey, Pamela Karlan, and Thomas Knox were present.

1. Public Comment.

Senator Ross Johnson stated that the Political Reform Act expressly limited contributions to ballot measure committees to no more than \$26,600, if the committee's advertising clearly identifies a candidate for state office even if the advertisement does not expressly advocate the election or defeat of the candidate. Additionally, the advertisement must be broadcast within 45 days of the election. Lastly, the communication must be made at the behest of the identified candidate.

Senator Johnson opined that Lt. Governor Cruz Bustamante flagrantly ignored that law when he inundated California's airwaves with commercials ostensibly opposing Proposition 54. He charged that the commercials were really intended to aid his campaign for governor. He pointed out that the advertisements clearly identified Bustamante and made Bustamante the entire focus of the commercial.

Senator Johnson stated that the "Cruz Bustamante Committee Against Proposition 54" was created on September 5, 32 days prior to the election, and started airing commercials almost immediately, well within the 45 day time frame. He noted that Bustamante controlled the committee and served as its treasurer. He pointed out that Bustamante also controlled and served as treasurer for the "Lt. Governor Bustamante 2002" committee, and charged that it transferred \$3.8 million in illegally raised campaign funds to the ballot measure committee. He explained that the ballot measure commercials were being produced by the same consultants who were running Bustamante's gubernatorial campaign and were airing at the behest of Bustamante.

Senator Johnson pointed out that the "Cruz Bustamante Committee Against Proposition 54" collected \$5.3 million in contributions, the largest being \$3.8 million, which was well above the \$26,000 limit. He noted that less than \$75,000 of the \$5.3 million was raised in amounts under the limit.

Senator Johnson stated that all three committees are controlled by Bustamante, and some have asked whether Bustamante may behest his own payments. However, Senator

Johnson emphasized that he did not believe Bustamante was “behesting” himself. He believed that Bustamante was behesting committees under his control, noting that committees are regarded by the PRA as a person, and that the plain meaning of the law provided that the ballot committee was a legally separate person. He pointed out that the “personal use” provisions of the PRA would prohibit Bustamante from using funds from the ballot measure committee for Bustamante’s house payment. He questioned how, logically, Bustamante could behest himself and how he could make a gift to himself.

Senator Johnson pointed out that “behest” is not defined in the PRA, nor was there a generally accepted legal definition of the term. He stated that dictionaries define “behest” as, “an authoritative order; a command”, “that which is willed or ordered,” and “a mandate; an injunction.” Senator Johnson stressed that the Proposition 34 contribution limits would evaporate if Bustamante could solicit contributions and direct expenditures for a ballot measure committee and consider it “behesting” himself.

Senator Johnson explained that the purpose of § 85310 was to prevent a candidate from totally evading the contribution limits of Proposition 34. Those limits would fall apart if the Commission decided that a candidate cannot behest a ballot measure committee that the candidate controls, because it would result in candidates creating sham ballot measure committees in order to raise unlimited money. He believe that Bustamante was ignoring the plain meaning of the law and asked the Commission what they intended to do about it.

Commissioner Knox asked Senator Johnson what he thought the Commission should do.

Senator Johnson suggested that the Commission could have gone into court to seek an injunction. He also suggested that the Commission could publicly state that the Commission did not give Bustamante advice and that Bustamante never sought advice from the FPPC. He reminded the Commission that they serve as political watchdogs, ensuring that campaigns are conducted fairly and in accordance with the law. He pointed out that the Commission must do more than just watch, they must take action. He noted that all of his statements can be confirmed on the Secretary of State’s website, and that a long investigation was not necessary for the Commission to decide that Bustamante’s actions violated the statute.

Commissioner Knox responded that, ordinarily, alleged violations are investigated and an orderly analysis of the facts takes place. Statements are taken from persons who gave or received checks. If a violation was determined to have taken place, an administrative or civil action would be considered by the Commission. He questioned whether that calendar should be accelerated just because of the election calendar, or whether the orderly development of a case should be pursued without regard to the election calendar.

Senator Johnson responded that if a mugging was going on in the street, someone should at least call out to try to stop the mugging, rather than just open an investigation. He

noted that Bustamante was defending himself in the media by claiming that he was following the advice of the FPPC, and Senator Johnson believed that statement to be untrue. However, he pointed out that the Commission should state that Bustamante was not following their advice and that, had he sought FPPC advice, he would have been given advice to the contrary. He pointed out that this case did not involve a minor technical violation of the law, but \$5.3 million in contributions, of which only \$75,000 was within the contribution limits. He noted that a judge ruled that \$3.8 million of those contributions was raised illegally, and that the largest single contribution in the history of the state was among those contributions. He suggested that staff could confirm those amounts on the SOS website.

Commissioner Knox asked whether it would be appropriate for the Commission to issue a press release while the matter was under investigation and may result in a future enforcement action.

Senator Johnson responded that the Commission should issue a press release, noting that Bustamante was making daily representations about the Commission. He believed that the Commission should not stand idly by while those representations were made because it lends an air of believability to the representations.

Chairman Randolph stated that Bustamante's appearance in the advertisements was part of the lawsuit that Senator Johnson filed.

Senator Johnson agreed, and noted that the judge did not get to that portion of the lawsuit because, at that time, there was no evidence of the additional contributions. The judge did not have to get to that issue because he ruled that the entire \$3.8 million was raised in violation of the law.

Chairman Randolph pointed out that the Commission had already issued two press releases, explaining the Commission's understanding of the rules, clearly stating that the Commission had not given the candidate advice on the issue. However, she pointed out that the Commission has not given advice to any candidate with regard to § 85310(c) since there is no regulation or fact sheet regarding that section because the Commission has not yet interpreted it. She pointed out that the judge did not interpret that section either.

Senator Johnson responded that the judge did not get to that point because there was no evidence at that time. He stated that the FPPC staff memo to the judge and the press release were not clear on the simple point that Bustamante did not ask for an FPPC opinion. He believed that the fact that the Commission had not yet interpreted § 85310(c) was immaterial because the plain reading of the section was clear and the violation was clear.

Senator Johnson reminded the Commission that they were sworn to enforce the campaign laws, and opined that the Commission should not wait until after the election to admonish Bustamante. He suggested that the Commission could invite Bustamante to explain what advice he was following and when he received the advice, instead of not saying anything.

Commissioner Knox stated that the Commission could not advise Bustamante about the applicability of § 85310, as discussed by the Chair.

Senator Johnson responded that he did not think that the Commission needed to adopt a regulation because the plain meaning of the law was clear. He pointed out that the voters of California passed Proposition 34 by a strong majority in November, 2000, and that the Commission had plenty of time to interpret it. He implored the Commission to show that it was more than just paper watchdogs by actually taking some action.

Commissioner Downey stated that he appreciated the Senator's remarks, noting that he had forcefully presented the arguments that must be going on in the FPPC's Enforcement Division. He explained that, as Commissioner Knox had already politely explained, action is taken or not taken after the allegations had been thoroughly investigated. He asked that the Senator assume that the Commission was performing its usual procedure.

Commissioner Downey assured Senator Johnson that the five members of the Commission were not going to be bullied, brought into a campaign, or hurried. He noted that the Commission would not feel good about the Senator's coming very close to impugning their integrity. He stated that the Commission would do the job and do it right and he hoped that Senator Johnson would have confidence in that.

Senator Johnson stated that he apologized if he had impugned the Commission's integrity, but noted that he very expressly impugned the glacier-like speed with which members of the Commission approached these issues. He reiterated his position that there does not need to be an investigation because the information is readily available on the web and in the PRA. He stated that the Commission did not need to delay with an enormous deliberative process that which should be apparent to anyone with a room temperature IQ.

Chairman Randolph stated that, since the item was not on the agenda, Senator Johnson's communication would be sent to the Enforcement Division to add it to the Senator's previous complaint which raised the same issue.

Commissioner Blair asked whether, if the Commission agreed with the Senator's sense of urgency and that the facts were obvious, the Commission could send out a news release clarifying their stand.

Chairman Randolph responded that the item was not agendaized so the Commission did not have the opportunity to reach a consensus and take a position on the issue, under the Bagley-Keene Act.

CONSENT ITEMS

Chairman Randolph asked that the following change be made to the minutes of the September 3, 2003:

On page 1, the language, "Ms. Daniels-Meade stated that the SOS expanded the view of the filings, which now included addresses and phone numbers," be changed to read, "Ms. Daniels-Meade stated that the SOS expanded the CARES view of the filings, available to the FPPC and Franchise Tax Board only, to include addresses and phone numbers."

Commissioner Karlan moved that the following consent calendar, with the change to the minutes as proposed by the Chairman, be approved:

Item #2. Minutes.

Item #3. In the Matter of BMG Entertainment, FPPC No. 03/010. (1 count.)

Item #4. In the Matter of the Crawford Law Firm, FPPC No. 02/703. (1 count.)

Item #5. In the Matter of the California Association for the Gifted Political Action Committee and Cathleen Silva, FPPC No. 00/671. (1 count.)

Item #6. In the Matter of Allstate Insurance Company Political Action Committee and James P. Zils, FPPC No. 01/389. (4 counts.)

Item #7. In the Matter of M.D.C. Holdings, Inc.; FPPC No. 03/277. (1 count.)

Item #8. In the Matter of Dwayne Bower; FPPC No. 01/305. (1 count.)

Item #9. In the Matter of Terry MacRae, FPPC No. 02/546. (1 count.)

Item #10. Failure to Timely File Major Donor Campaign Statements.

- a. **In the Matter of Enrique & Megan Hernandez, FPPC No. 2003-312.** (1 count.)
- b. **In the Matter of William P. Carey, FPPC No. 2003-385.** (1 count.)
- c. **In the Matter of Coleman Homes, Inc., FPPC No. 2003-388.** (1 count.)
- d. **In the Matter of Terry L. Moreland, FPPC No. 2003-487.** (1 count.)

- e. *In the Matter of C. Anthony Thomas AKA Tony Thomas, FPPC No. 2003-490.* (1 count.)
- f. *In the Matter of Bestway Disposal Company, Inc., FPPC No. 2003-569.* (1 count.)
- g. *In the Matter of Stanley Black & Black Equities, FPPC No. 2003-570.* (2 counts.)
- h. *In the Matter of Gillette Company, FPPC No. 2003-576.* (1 count.)

Item #11. Failure to Timely File Major Donor Campaign Statements.

- a. *In the Matter of First Management Group Investments, Inc., FPPC No. 2003-348.* (1 count.)

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted “aye.” The motion carried unanimously.

Item #12. Prenotice Discussion of Amendments to Regulation 18705.5 – Sources of Income to Owners of Retail Business Entities.

Commission Counsel Jill Stecher explained that Government Code section 87103.5 and regulation 18707.5 provided that retail customers of a business entity are not considered sources of income to a public official owning 10% or more of that business entity if (1) the retail customers comprise a significant segment of the public generally, and (2) the amount of income received by the business entity from the customer is not distinguishable from the amount of income received from other customers. She explained the history of § 87103.5, noting that the statute was amended in 2002 to include a special rule for small jurisdictions.

Ms. Stecher stated that the regulation needed to be amended to incorporate the 2002 amendments to the statute. She explained that proposed subdivision (a) sets forth the standards for determining when the retail customers of a business entity constitute a significant segment of the public generally for both large and small jurisdictions. She noted that subdivision (b) establishes standards for determining when income from a customer was not distinguishable from income from other retail customers for both large and small jurisdictions. She further described the language of the regulation, noting that subdivision (a)(1)(B)(2) parallels the language of the statute.

Ms. Stecher stated that the Commission would need to determine whether large jurisdictions should use a “fiscal year” time standard or the “12-month preceding a decision” time standard now required by the statute for small jurisdictions. She noted that the 12-month time standard for both large and small jurisdictions would make the

tests consistent, and then the only difference between the tests for large and small jurisdictions would be the percentage of money spent by the customers over the same 12-month period of time.

Ms. Stecher stated that large businesses generally utilize a fiscal year standard for reporting purposes, noting that the Commission recognizes fiscal year standards in its other regulations. She explained staff's recommendations that the regulation be amended to conform with the new language in the statute for small jurisdictions, that the 12-month time standard replace the current fiscal year time standard for large jurisdictions, and that other minor changes to the regulation be made and adopted at the December, 2003 Commission meeting.

Ms. Stecher noted a secondary issue regarding whether the regulation should be in step 3 instead of step 7 of the 8-step conflict of interest analysis. Staff suggested this move because the retail customer who meets the criteria of regulation 18707.5 would not be considered a source of income to the business owner and the 8-step analysis would be ended at step 3. However, she explained that a change to the 8-step analysis was not required by the statutory changes in § 87103.5 or by the proposed amendments to regulation 18707.5, noting that staff wanted to bring the issue to the attention of the Commission for possible future consideration.

Commissioner Karlan suggested that the definition of "large jurisdiction" be changed in the language of 18707.5(a)(1) and (b)(1), by moving the phrase "business entity" to the beginning of the phrase to make it clearer that a business should look to see if it meets either of the criteria to determine whether those rules should be used.

Commissioner Downey agreed. He supported the staff recommendation to change the fiscal year time standard to a 12-month time standard for large jurisdictions because the statute specifically includes the 12-month language. He acknowledged that it may present a practical problem for businesses, but noted that it could not be avoided.

Commissioner Karlan asked whether people would jump to step 7 of the 8-step analysis instead of step 3.

General Counsel Luisa Menchaca responded that some officials may not realize that they do not need to proceed with the materiality and foreseeability analysis. She noted that the Commission previously determined that the conflict analysis can be started wherever it is appropriate and in this case going straight into step 7 would be appropriate.

Chairman Randolph supported leaving the regulation at step 7 of the conflict of interest analysis. She suggested that staff make the changes to the proposed regulation suggested by Commissioner Karlan and bring it back to the Commission at its December, 2003 meeting.

Item #13. Adoption of Regulation 18728.5 and Amendment of Regulation 18703.3 – Definition and Reporting of Incentive Compensation.

Commission Counsel Holly Armstrong presented amendments to the two regulations, addressing reporting requirements of incentive compensation. She reported that regulation 18703.3 is a definitional regulation and regulation 18728.5 dealt with reporting commission income and incentive compensation.

Ms. Armstrong stated that the proposed amendment to regulation 18703.3 was changed to address the Commission's concern regarding the definition of incentive compensation in subdivision (d). The phrase, "which is ongoing and/or cumulative" was changed to, "which is either ongoing or cumulative, or both." She explained that the basic definition of "incentive compensation" was broken into two sentences.

Ms. Armstrong stated that the exclusionary language, "the amount of which is based on performance measured against a pre-set standard or goal," was related to bonuses. She explained that incentive compensation is calculated by a predetermined formula and the Commission had expressed concern that this might be confused with the bonus exclusion. She reported that staff, in order to distinguish incentive compensation from a single-event bonus, added the phrase, "for non-sales or marketing activity," as a modifier to the bonus exclusion, and the phrase, "performance measured against a pre-set standard or goal," was eliminated because modifying language made the phrase unnecessary. She explained that the phrase, "but where," was changed to "provided that," pursuant to the Commission's suggestion, and the word "personal" was added to (d)(2) to clarify that persons in supervisory roles would not qualify as having received incentive compensation if the contact with the purchaser was through subordinates.

Ms. Armstrong explained that proposed regulation 18728.5 was corrected by staff to eliminate the language, "from each source," from (b)(1) because an official is only supposed to report the total amount of commission income equal to or exceeding \$500 during the period covered by the statement, and not the total amount of commission income from each source. She noted that subdivision (b)(2) included additional introductory language to make it clearer.

Ms. Armstrong noted that staff included examples in the staff memorandum to show how the regulations would work in different fact scenarios. She believed that the proposed amendments would be easier for the public to understand, and comported with the directions given to staff by the Commission at its September, 2003 meeting. Staff recommended adoption of regulation 18728.5 and the amendments to regulation 18703.3.

In response to a question, Ms. Armstrong stated that Part 1 of Form 700 example 1 pertained to ownership interest, and Part 2 pertained to gross income received, by the person completing the form from the business.

Technical Assistance Division Chief Carla Wardlow explained that the “fair market value” in part 1 referred to the person’s share of the business, and Part 2 referred to the person’s 10% share of the income to the business. Ms. Wardlow observed that staff often sees reports of income exceeding \$100,000 from businesses worth less than \$10,000, which staff learns, upon further study, has had costs and losses already deducted from it.

Commissioner Knox stated that he was against the regulation, but suggested that the language, “for non-sales or marketing activity” in proposed regulation 18703.3(d) be changed to, “for non-sales or non-marketing activity,” to make it clearer.

After further discussion the Commission changed the language to, “bonuses for activities which are unrelated to sales or marketing.”

Commissioner Knox also suggested that (d)(1) and (2) end with the word “and,” and the sentence before (1) be changed to read, “The purchaser is a source of income to the official if all three of the following apply:”

There was no objection from the Commission.

Commissioner Downey moved to approve the adoption of regulation 18728.5 and amendment of regulation 18703.3 as recommended by staff with the changes outlined by the Commission.

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan and Chairman Randolph voted, “aye.” Commissioner Knox voted, “no.” The motion carried by a vote of 4-1.

Item #14. Regulation Calendar for the Year 2004: Setting of Priorities

Assistant General Counsel John Wallace presented the proposed 2004 calendar in the form of a list of proposed projects, asking that the Commission review and approve the list, and noting that staff would present a calendar scheduling the projects at the December, 2003 meeting. He explained that staff’s proposal estimated the time commitment for each of the projects, and listed the projects according to the amount of time the projects would require, with the most time-consuming project being first on the list. He noted that staff included alternate projects, in case additional time would allow their consideration.

Mr. Wallace explained that AB 1678 amended § 87407, which prohibits state administrative officials from making, participating in making, or influencing a governmental decision affecting a person with whom the official is negotiating employment. The bill would extend the prohibition to all state and local public officials. He anticipated that the statute will require regulatory work.

Mr. Wallace stated that staff would be holding an Interested Persons meeting regarding regulation 18901 to see what types of concerns need to be addressed in the regulation. He pointed out that Senator Ross Johnson requested amendment of the regulation.

Mr. Wallace reported that the issues surrounding the recall election and the campaign contributions to Cruz Bustamante brought to staff's attention the need to interpret § 85310. He asked the Commission to add it to the 2004 regulatory calendar.

Commissioner Downey pointed out that the regulations already refer to a "public official," and questioned the need to further interpret § 87407.

Mr. Wallace responded that staff has not yet determined that amendments would be necessary, but noted that staff could make that determination if the item was on the calendar.

Ms. Menchaca explained that the "revolving door" regulations generally use the term "public official," but the statute currently limits it to state agencies. Staff would need to determine how the two definitions interact.

Commissioner Downey agreed.

Commissioner Blair asked whether there was a methodology that would allow the Commission to react faster to issues as they arise.

Chairman Randolph responded that the Commission can add items to the calendar at any time, and can consider regulations and emergency regulations.

Ms. Menchaca noted that the Commission considered several regulations on an emergency basis in the last year that were related to Proposition 34. Those are brought to the Commission when an issue is identified, and the emergency regulations take effect right away. The emergency regulations are then considered for permanent adoption within 120 days. Otherwise, staff presents a quarterly review of the regulation calendar and adds or deletes items as the Commission directs.

Commissioner Blair asked whether the Commission could react quickly when a loophole that is being blatantly abused is discovered, even if it is not agendaized.

Ms. Menchaca responded that there is a 10-day notice requirement to place the item on the agenda. She noted that, if an issue is urgent enough, an emergency or special meeting could be done more quickly, but the requirements for those meetings are strict.

Mr. Wallace added that a 30-day notice is required for adoption of regulations pursuant to the Administrative Procedures Act, although emergency regulations can work around that notice. However, the Bagley-Keene Act would still require the 10-day notice.

Commissioner Knox asked whether there were notice provisions pertaining to the filing of an immediate enforcement action, such as the action suggested earlier in the meeting by Senator Ross Johnson.

Ms. Menchaca responded that the Commission could not act on the concerns presented by Senator Johnson earlier in the meeting because the Bagley-Keene Act allows only agenda items to be considered by the Commission.

Chairman Randolph stated that a speedier enforcement action would require 48-hours notice for a special meeting, and the action must meet the statutory definition for a special meeting.

Commissioner Knox asked whether hypothetical press reports of violations of the PRA by political candidates could justify an emergency meeting.

Ms. Menchaca responded that litigation issues justify an emergency meeting. She pointed out that she knew of no instance whereby the FPPC brought an enforcement action within 30 days of an election based on a complaint received prior to an election. She opined that the Commission has not done that in the past because of its concern that their effort could impact the election.

Commissioner Karlan asked staff to develop a retrospective on the issues brought up during the recall election, to determine whether regulatory action is necessary.

Ms. Menchaca responded that an overview of Proposition 34 issues was on the regulatory calendar at one time, but it was removed. She agreed that it should be put back on the calendar.

Commissioner Karlan observed that the recall election issues were so complex that it may be worth taking the time to study those issues, especially considering that the recall issue may come up again.

Commissioner Blair agreed, and urged staff to explore ways to react quickly when blatant loopholes are discovered.

Ms. Menchaca agreed, and noted that staff may recommend legislative changes because the statutes may need to be changed.

Chairman Randolph directed staff to present a calendar in December with a placeholder for recall/Proposition 34 issues. She noted that § 85310 will probably be one of the items on the calendar, in addition to the placeholder item.

Mr. Wallace responded that the December calendar will include proposed timing of the different projects for the Commission's consideration.

Commissioner Karlan noted that item IV(C) on the staff memorandum was requested several times by Colleen McAndrews, and asked staff to clarify the priority level of items in part IV.

Mr. Wallace responded that the request was placed as a secondary item on the calendar because Legal and Enforcement Divisions had some concerns about her proposal. Staff included documentation about her proposal with the staff memorandum so that the Commission could consider whether they wanted it to be a higher priority.

Commissioner Karlan observed that disclosures are filed electronically and/or in hard copy, and suggested that it might be appropriate to consider them in different categories, providing different disclosure requirements for hard copy filings when the filing officer's office is closed.

Ms. Menchaca noted that the issue may be covered in the Commission's review of Proposition 34, because it was Proposition 34 that created the paperless filings.

Commissioner Karlan agreed.

Mr. Wallace stated that it could be included as an item on the calendar.

Chairman Randolph suggested that it be tentatively included on the calendar, and the Commission could decide whether it should be a priority at its December 2003 meeting.

Item #15. Deliberation on Remand, In the Matter of Dan Gamel, et al.

Chairman Randolph explained that the Commission would hear the testimony of the Enforcement Division, then hear testimony from the Respondent (if he was present), and then deliberate on the matter in closed session.

Commission Counsel Julia Bilaver explained that an administrative hearing in the case was held two years ago before an administrative law judge (ALJ), who issued a proposed decision which the Commission adopted in its entirety. The ALJ found that Rudy Olmos participated as an intermediary in a money laundering scheme, and that Mr. Olmos was fined \$2,000 for the violation. The respondent sought judicial review of the decision and the court remanded the matter back to the Commission because the ALJ decision did not adequately explain why a \$2,000 fine was imposed on Mr. Olmos.

Ms. Bilaver explained that the Commission could now (1) reassess the penalty based on the factual findings of the ALJ, (2) review a transcript of the hearing before making a determination regarding the penalty, or (3) take additional evidence, or send the case back to the ALJ to take additional evidence, on the penalty issue.

Ms. Bilaver stated that Enforcement staff supported the first option, because the ALJ heard live testimony and was able to weigh the credibility of the witnesses at the hearing. She noted that respondent already had the opportunity to present mitigating evidence. Staff believed that the ALJ findings supported the imposition of a \$2,000 penalty.

Ms. Bilaver reviewed the three factors that enforcement staff believed supported the penalty: (1) that money laundering is one of the most serious violations of the PRA resulting in great public harm; (2) that the respondent demonstrated an intent to conceal information, and; (3) that the violation was deliberate and not the result of an inadvertent omission. For these reasons, Ms. Bilaver stated that staff believed the \$2,000 penalty was a fair and just resolution of the case.

Commissioner Blair asked how staff came to the proposed \$2,000 fine.

Ms. Bilaver responded that, even though \$2,000 seemed too low, it was the maximum fine that could be imposed during the year the violation occurred. She added that the maximum fine is now \$5,000.

In response to a question, Ms. Bilaver stated that the amount that can be fined is established by statute, and that the recent change to \$5,000 was the first increase in 25 years. She noted that it can only be changed by legislation. She explained that the ALJ recommended the maximum fine in this case and the Commission adopted it.

Commissioner Knox questioned what evidence supported the Commission's position that Mr. Olmos made the contribution with an expectation of reimbursement.

Ms. Bilaver explained that one of the witnesses testified that he was present when Mr. Olmos and Mr. Gamel first discussed the contribution and the reimbursement. The same witness also testified that he was involved in the actual reimbursement of the contribution to Mr. Olmos.

Chairman Randolph noted that the ALJ's findings #6-#10 summarized the ALJ's factual determinations on that issue, and that the ALJ did not cite to the record.

Commissioner Karlan questioned whether it was double-counting aggravating factors to say that money laundering is the most serious offense and that the respondent hid what he was doing, noting that hiding the money is inherent in money laundering.

Ms. Bilaver stated that the Commission and the Enforcement Division have historically viewed money laundering as implicating one or more of the aggravating factors.

Commissioner Karlan responded that the first two factors seemed identical. She could imagine a covert action that was not money laundering, but could not imagine money laundering that was not a covert action.

Commissioner Downey pointed out that a naive money launderer might not know they were doing something illegal, and might launder the money to make it look like more people supported the candidate, without intending to assist in avoiding contribution limits.

Commissioner Karlan charged that the ALJ report did not make clear that Mr. Olmos understood that Mr. Gamel asked him to give the money in order to evade the contribution limits. She believed his willfulness to violate the law may be in question.

Chairman Randolph responded that the ALJ considered that the deception continued through the enforcement action.

Commissioner Karlan suggested that the aggravating factors could be disregarded, and that the penalty could be based solely on the money laundering, and asked if it would still justify the \$2,000 fine.

Ms. Bilaver responded that the severity of the violation by itself was enough to warrant the maximum \$2,000 fine. The fact that Mr. Olmos made the contribution knowing that he would be reimbursed for it showed an intent to conceal. She noted that Mr. Gamel's request that Mr. Olmos make the contribution, for which he would be reimbursed, is a highly unusual request, and that ignorance of the law is no excuse.

Commissioner Karlan agreed that it was not an excuse for liability, but might be a consideration for the penalty. If someone was truly ignorant of the law, the maximum fine might not be appropriate. She noted, however, that since Mr. Olmos resisted throughout the entire process, the Commission could infer that he knew all along that he was wrong.

Enforcement Chief Steven Russo suggested that the person who made the contribution for another person should have known that there was something shady going on. He explained that, even if the respondent did not have precise knowledge of the particular law, if the respondent knew it was probably wrong he should not have done it.

Chairman Randolph observed that Mr. Olmos was not at the meeting to present his views on the matter.

Item #15. Appointment of a Chairman *pro Tempore*.

Chairman Randolph explained that she will be away from the office during October and November but would be reachable most of that time. She expected to be back in time for the December 2003 Commission meeting, but thought it would be better to appoint a Chairman *pro Tempore* just in case she cannot be back by then.

Chairman Randolph moved that Commissioner Knox serve as the Chairman *pro Tempore*.

Commissioner Blair seconded the motion.

There was no objection to the motion.

Item #17. Legislative Report

Executive Director Mark Krausse asked for the Commission's ratification of the position taken by the Chairman's Legislative Subcommittee. He explained that AB 890 was gutted and amended near the end of the legislative session and that Speaker Wesson intended the bill to give last-term members the ability to fundraise despite Proposition 34's prohibition in § 85316. The Speaker's staff acknowledged that the bill's current language would allow over-limit contributions, and indicated to FPPC staff that they would not proceed with it. Mr. Krausse asked for the Commission's approval to oppose the bill unless amended and support the bill if it is amended.

In response to a question, Mr. Krausse explained that staff recommended opposing AB 890 and SB 467 because they would both allow last-term officeholders to collect monies that could be used either to help other candidates or as a "war chest" for future elections. Additionally, staff recommended that the Commission ratify a proposed amendment that would not allow any committee to collect contributions in excess of Proposition 34's contribution limits.

Commissioner Karlan asked whether the proposed amendments would support the idea that money can be raised into a committee to retire the debt, to deal with officeholder expenses, or to spend money on other purposes.

Chairman Randolph stated that the proposed amendment would not allow the money to be spent on other purposes.

Mr. Krausse agreed, noting the language in the bill that would allow the money to be spent for other issues. He added that the bill is not needed to pay off debt because existing law covers it. The amendment would provide members in their last term with an exception to the rule that they can only raise money after an election to pay off debt.

Chairman Randolph clarified that members who were not in their last terms can have a future campaign committee, and the monies in that committee account can be used for officeholder expenses. Officeholders in their last term, however, cannot raise money into anything.

Commissioner Karlan was disconcerted by the fact that monies can be raised into committees that were neither for the purpose of retiring debt nor for funding of actual officeholder expenses, and that those monies could be used for just about anything.

Mr. Krausse responded that the Commission's proposed amendment would prohibit the officeholders from using those monies for "just about anything." He explained that many officeholders have no issue in this matter because they have pre-Proposition 34 committees. However, members elected in 2002 or after will not have the ability to fundraise when they are in their last term without this bill. The Commission's position has been that last-term officeholders should have the ability to raise monies for officeholder expenses only.

Chairman Randolph reiterated that, without the Commission's proposed amendment, the bill would allow officeholders to use committee monies for "just about anything."

In response to a question, Mr. Krausse stated that he did not know whether Speaker Wesson supported the Commission's proposed amendments, and noted that, even if the author supports the amendment, members of the panel may question why some members can use their committee monies for purposes other than those associated with holding office.

There was no objection to a position of "oppose unless amended" and "support if amended."

Item #18. Executive Director's Report.

Mr. Krausse reported that he had nothing to add to the written report.

Litigation Report

Staff had nothing to add to the Litigation Report.

The meeting adjourned to closed session at 11:07 a.m.

The meeting reconvened in open session at 12:46 p.m.

Chairman Randolph reported that the Commission voted to issue an order imposing a fine of \$2,000 on Respondent Rudy Olmos. She noted that the written order would be forthcoming.

The meeting adjourned at 12:47 p.m.

Dated: December 4, 2003.

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Randolph